

**Exhibit C**

Confirmation Hr'g Tr.

*In re The Container Store Grp., Inc., No. 24-90627 (ARP) (Bankr. S.D. Tex. Jan. 24, 2025)*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE: § CASE NO. 24-90627-11  
THE CONTAINER STORE GROUP, § HOUSTON, TEXAS  
INC., ET AL, § FRIDAY,  
DEBTORS. § JANUARY 24, 2025  
§ 12:59 P.M. TO 2:02 P.M.

**CONFIRMATION HEARING**

BEFORE THE HONORABLE ALFREDO R. PEREZ  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE  
COURTROOM DEPUTY: AKEITA HOUSE  
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**APPEARANCES (VIA HYBRID) :**

FOR THE DEBTORS:

HUNTON ANDREWS KURTH, LLP  
Ashley Harper, Esq.  
Tad Davidson, Esq.  
Philip Guffy, Esq.  
600 Travis, Ste. 4200  
Houston, TX 77002  
713-220-3810

LATHAM & WATKINS  
Hugh Murtagh, Esq.  
Jonathan Weischselbaum, Esq.  
Amy Quartarolo, Esq.

Tim Dillman, Esq.

FOR THE TRUSTEE:

OFFICE OF THE US TRUSTEE  
Ha Nguyen, Esq.  
515 Rusk St., Ste. 3516  
Houston, TX 77002  
202-590-7962

FOR THE AD HOC GROUP  
OF TERM LENDERS:

PAUL HASTINGS, LLP  
Charles Persons, Esq.  
2001 Ross Avenue  
Suite 700-168  
Dallas, TX 75201  
972-936-7500

FOR US SECURITIES AND  
EXCHANGE COMMISSION:

SECURITIES & EXCHANGE  
COMMISSION  
Patricia Schrage, Esq.  
100 Pearl Street  
New York, NY 10004  
212-336-0163

(Please also see Electronic Appearances.)

**INDEX**

WITNESSES:                    Direct    Cross    Redirect    Recross

(None called)

EXHIBITS:                    Admitted

DEBTORS':

ECF 171-1 to 171-18	35
ECF 171-19	9
ECF 171-20	8
ECF 171-21	9
ECF 179	10

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HOUSTON, TEXAS; FRIDAY, JANUARY 24, 2025; 12:59 P.M.

THE COURT: All right. Good afternoon. It is Friday, January 24th. We're here for the 1:00 o'clock Docket, the confirmation hearing in Case Number 24-90627, The Container Store.

MS. HARPER: Good afternoon, Your Honor. Ashley Harper, Tad Davidson, and Philip Guffy from Hunton Andrews Kurth on behalf of the Debtors.

And from the Latham & Watkins team, Hugh Murtagh, Jonathan Weichselbaum, Amy Quartarolo. And on GoToMeeting, Ted Dillman.

THE COURT: Thank you.

MR. NGUYEN: Good afternoon, Your Honor. Ha Nguyen, for the United States Trustee.

THE COURT: Thank you.

MR. PERSONS: Good afternoon, Your Honor. Charles Persons of Paul Hastings for the Ad Hoc Group of Lenders and DIP Lenders.

THE COURT: All right. Anyone wish to make an appearance on the phone?

(No verbal response)

THE COURT: Any appearances on the phone?

(No verbal response)

MS. SCHRAGE: Hello, Your Honor. Patricia Schrage for the Securities and Exchange Commission.

1 THE COURT: Good afternoon, Ms. Schrage.

2 All right. Who's going to take the lead?

3 MR. MURTAGH: That's me. Good afternoon, Your  
4 Honor. Hugh Murtagh from Latham & Watkins on behalf of the  
5 Debtors.

6 It is my privilege to appear this morning on behalf  
7 of the Debtors for confirmation of the plan and a pleasure to  
8 be in front of Your Honor for the first time. Thank you to  
9 you and your staff for accommodating us today and over the  
10 course of the last five or six weeks.

11 I would also like to take a minute at the outset to  
12 thank the company's many creditors, stakeholders, their  
13 counsel and advisor, some of whom are here today, and the U.S.  
14 Trustee for working with us over the past several weeks to  
15 resolve the vast majority of the comments and objections that  
16 were raised on the plan and other issues along the way.

17 As of today, Your Honor, there are two outstanding  
18 objections to the plan, one from the Office of the United  
19 States Trustee and one from the SEC, both relating to the  
20 third-party releases, and we'll come to those.

21 As we'll discuss in some detail, we're very pleased  
22 to be seeking confirmation of the prepackaged Chapter 11 cases  
23 that substantially de-leverage the Debtors' balance sheet and  
24 that received unanimous support from all voting classes -- or  
25 the sole voting class in these cases.

1                   As I just said, Your Honor, we have unanimous  
2 support from the sole voting class. We've resolved every  
3 objection, other than the UST and the SEC, with regard to the  
4 third-party releases.

5                   And we have a plan to confirm that substantially de-  
6 levers the company by reducing its total funded debt by  
7 approximately \$88 million, through equitization of a  
8 significant portion of the pre-petition term loan claims,  
9 while still paying all unsecured creditors in full in the  
10 ordinary course. All vendors will be paid or otherwise  
11 satisfied in full and over 3,800 jobs will be preserved. And  
12 all of that is a testament to the hard work of the  
13 stakeholders and the professionals in this case and we think  
14 to the fairness of the plan. So we're very encouraged and  
15 happy to be here, Your Honor.

16                   If I could also make a few introductions:

17                   First, as Ms. Harper said, I'm joined by Ms.  
18 Quartarolo and Mr. Weichselbaum from Latham.

19                   We're joined in the courthouse by Mr. Chad Coben,  
20 who is the Debtors' chief restructuring order -- Chief  
21 Restructuring Officer. And he has submitted a declaration in  
22 support of confirmation, which is at Docket 162.

23                   Mr. Adam Dunayer is also here, managing director in  
24 the financial restructuring group at Houlihan Lokey, the  
25 Debtors' financial advisor. He submitted a declaration in

1 support of confirmation, which can be found at Docket 163.

2 And finally, importantly, we're joined virtually by  
3 Darlene Calderon, who is a Director of Corporate Restructuring  
4 at the Debtors' claims and noticing agent Verita. She  
5 submitted a declaration in support of confirmation, which can  
6 be found at Docket 164.

7 Notably, Your Honor, Ms. Calderon also has prepared  
8 and just recently, within the last hour, submitted a  
9 supplemental declaration in support of confirmation, which I  
10 believe is at Docket 179. Your Honor, that brief declaration  
11 sets forth some factual matters or additional detail on the  
12 noticing and that -- and opt-outs that were received. And I  
13 expect Your Honor has not had an opportunity to review it yet,  
14 but I'd be happy to pass it up if it would be helpful.

15 THE COURT: I can find it.

16 MR. MURTAGH: Okay. Let me make sure that I have a  
17 copy in front of me, Your Honor. I don't know how I lost that  
18 on the way to the podium, but I've got another one now.

19 (Laughter)

20 MR. MURTAGH: Okay.

21 THE COURT: Give me a minute.

22 MR. MURTAGH: Those are the declarants or the  
23 potential witnesses in support to offer evidence.

24 Your Honor, if it's acceptable to you, I would  
25 propose to start by introducing the declarations, subject to

1                   cross-examination, if there's no objections; and then briefly  
2                   turning to adequacy of the Disclosure Statement, which is  
3                   technically a matter before Your Honor today; and then to turn  
4                   to the plan, and very briefly, Your Honor, really, with  
5                   everything, except to the expected argument over the third-  
6                   party releases.

7                   THE COURT: Okay. So what -- the supplemental  
8                   declaration at 179, let me just review it.

9                   MR. MURTAGH: Yes, Your Honor.

10                  (Pause in proceedings)

11                  THE COURT: Okay.

12                  MR. MURTAGH: So, Your Honor, that brings a total of  
13                  four declarations. I'll step through them.

14                  The first declaration we would propose to submit is  
15                  the declaration of Chad Coben in support of confirmation, and  
16                  that's at Docket Number 162.

17                  THE COURT: All right. Does anyone object to the  
18                  admission of the declaration of Mr. Coben? It is in the  
19                  Debtors' witness and exhibit list, Docket Number 171-20.

20                  (No verbal response)

21                  THE COURT: All right. No objections. It will be  
22                  admitted.

23                  (Debtors' Exhibit ECF 171-20 received in evidence)

24                  THE COURT: And we'll reserve cross-examination  
25                  until all of them are considered.

1 MR. MURTAGH: Understood.

2 The second is the declaration of Adam Dunayer in  
3 support confirmation. As I said, Mr. Dunayer is here in the  
4 courtroom. It's Docket Number 163.

5 THE COURT: All right. Does anyone oppose the  
6 admission of the declaration of Mr. Adam Dunayer as his direct  
7 testimony found at Docket 171-21?

8 (No verbal response)

9 THE COURT: All right. Hearing no objections, it's  
10 admitted.

11 (Debtors' Exhibit ECF 171-21 received in evidence)

12 THE COURT: And we'll reserve on cross-examination.

13 MR. MURTAGH: The third, Your Honor, is the first  
14 declaration of Ms. Calderon, regarding solicitation of votes  
15 and tabulation of ballots cast on the prepackaged joint plan,  
16 and that's Docket Number 164.

17 THE COURT: All right. Does anyone object to the  
18 admission as direct evidence, the declaration of mister -- of  
19 Ms. Darlene Calderon at Docket Number 171-19?

20 (No verbal response)

21 THE COURT: All right. Hearing none, we will admit  
22 that.

23 (Debtors' Exhibit ECF 171-19 received in evidence)

24 MR. MURTAGH: Your Honor, I believe that that Docket  
25 number is -- for the original declaration, is 164.

1 THE COURT: Yeah, it's 164. But on the witness and  
2 exhibit --

3 MR. MURTAGH: Witness --

4 THE COURT: -- list --

5 MR. MURTAGH: I'm sorry.

6 THE COURT: -- it's 171-19.

7 MR. MURTAGH: Understood.

8 And the final, Your Honor, is the one we were just  
9 talking about, it's the supplemental declaration of Ms.  
10 Calderon, it's Docket 179. It -- as I said -- and Your Honor  
11 had, I know, only a moment to review it, but it was intended  
12 to provide additional detail that the Office of the United  
13 States Trustee had asked for. And I -- my understanding is  
14 that, with the submission of this declaration, the office is  
15 happy with the completeness of the factual record and will not  
16 be seeking to cross-examine. But obviously, the Office of the  
17 U.S. Trustee can speak for itself on that point. It's Docket  
18 Number 179.

19 THE COURT: All right. Does anyone object to the  
20 declaration of miss -- the supplemental declaration of Ms.  
21 Darlene Calderon found at Docket Number 179?

22 (No verbal response)

23 THE COURT: All right. That will be admitted.

24 (Debtors' Exhibit ECF 179 received in evidence)

25 THE COURT: All right. Does anyone wish to

1 cross-examine Ms. Calderon, Mr. Coben, or Mr. Dunayer?

2 (No verbal response)

3 THE COURT: Okay. Hearing none, I will allow that  
4 testimony in.

5 Go ahead.

6 MR. MURTAGH: Thank you, Your Honor.

7 Let me touch very briefly on adequacy of the  
8 Disclosure Statement.

9 Your Honor, as you know, there was one voting class  
10 here. Everybody in that class voted in favor of the plan. We  
11 have not received any objections, concerns, comments, or  
12 otherwise on the Disclosure Statement or the adequacy thereof.

13 And unless Your Honor has questions about the  
14 Disclosure Statement at this point, we would ask the Court to  
15 approve the Disclosure Statement on a final basis.

16 THE COURT: All right. Does anyone wish to be heard  
17 with respect to the approval of the Disclosure Statement on a  
18 final basis?

19 (No verbal response)

20 THE COURT: All right. Hearing none.

21 I have reviewed the Disclosure Statement in  
22 connection with both preparation for this hearing, as well as  
23 at the time that I entered the initial order. And based on my  
24 reading and based on the record in the case and the fact that  
25 there have been no objections filed, I find that the

1 Disclosure Statement has adequate information, so it is  
2 approved.

3 MR. MURTAGH: Thank you, Your Honor.

4 Then turning to the main event, the plan.

5 Your Honor, six weeks ago, on December 21st, we  
6 really began this brief journey with a transition services  
7 agreement that was executed by holders over 90 percent of the  
8 outstanding principal amount of term loans and the consenting  
9 stockholder, which is LGP in this case.

10 On the same day, we began solicitation of the term  
11 loan holders on the plan.

12 On the 22nd, we filed our petitions.

13 And of course, on the 23rd, we were before Your  
14 Honor for the first-day hearing.

15 Since that time, things have gone remarkably  
16 smoothly up to today, and I -- hopefully, today will be no  
17 different.

18 As Your Honor knows, we had no objections to the  
19 final orders or the relief on a final basis on a couple of  
20 motions that were left open on an interim basis, and those  
21 final orders were entered on January 16th.

22 Pursuant to the solicitation procedures order, the  
23 voting opt-out deadline and the plan and Disclosure Statement  
24 objection deadline were set for the 21st of this month.

25 As I noted at the outset, we received only two

1           objections, two -- sorry -- two formal objections that are  
2           unresolved from the UST and the SEC. We did receive a filed  
3           objection from one landlord whose concerns we have been able  
4           to resolve by modifications to the proposed order.

5           And that brings us to today, Your Honor.

6           As Your Honor is well aware, I'm sure, the plan  
7           classes the claimants to eight classes, seven of which are  
8           non-voting classes.

9           Class 1, which is other secured claims; Class 2,  
10           which is ABL claims; and Class 4, which is general unsecured  
11           claims, are unimpaired and are not voting.

12           Class 3, the pre-petition loan claims, is the voting  
13           class. They voted unanimously in favor.

14           Classes 5, subordinated claims, and Class 8, equity  
15           interests, are not recovering and are deemed to reject the  
16           plan.

17           And Classes 6 and 7 are intercompany claims and  
18           intercompany interests, respectively, which are either deemed  
19           to accept or reject, as applicable.

20           Just to highlight a few key aspects of the plan and  
21           the transactions contemplated thereunder:

22           As I noted at the outset, the plan and the related  
23           transaction documents de-lever the company by about \$88  
24           million by equitizing a substantial portion of the term loans.

25           The exit financing includes 40 million of new money

1       through the term loan DIP and a roll of the exit financing  
2       with Eclipse Business Capital, which we believe will give the  
3       Debtors a solid footing as reorganized entities.

4               Again, happy to report and reiterate that all  
5       general unsecureds are unimpaired.

6               And Your Honor, virtually all, with very, very  
7       limited exceptions, all executory contracts and unexpired  
8       leases are being assumed.

9               Finally, really the only, I think, sticking point  
10      that's left, subject to hearing anybody else who may want to  
11      be heard, is the third-party releases, which is obviously an  
12      issue Your Honor is familiar with, and I will present an  
13      argument on that. And obviously, we'll hear from the trustee  
14      and the SEC.

15               But unless Your Honor has questions about other  
16      aspects of the plan that are, I don't believe in dispute, I  
17      would move past those and just focus on the releases.

18               THE COURT: Okay. Does anyone else wish to be heard  
19      on anything other than the issues raised by the U.S. Trustee  
20      and the SEC?

21               (No verbal response)

22               THE COURT: Let me -- just one question. The U.S.  
23      Trustee raised an issue regarding the fourteen-day stay. I  
24      believe Mr. Coben addressed that in his declaration. Is there  
25      any further testimony on that?

1 MR. MURTAGH: No, Your Honor, there's no further  
2 evidence to present on it. I'm happy to speak to it as an  
3 argument point, if you would like me to.

4 THE COURT: Yeah, that would be -- that would be  
5 fine.

12                   This is an important company, but a company that,  
13                   Your Honor, is not that big, in terms of capital structure.  
14                   And the fees that are associated with every incremental day in  
15                   bankruptcy are actually meaningful to this company, quite  
16                   meaningful to the company and the stakeholders and the  
17                   creditors who are funding the exit.

18                   We think it's, you know, absolutely routine here and  
19                   in other districts to waive that stay period to allow plans to  
20                   go effective, particularly given the -- a case like this and  
21                   the degree of consensus that we have around it.

22 So, unless Your Honor has specific questions about  
23 it --

24 THE COURT: No, I don't have any questions.

25 MR. MURTAGH: Should I turn to the releases, Your

1 Honor?

2 THE COURT: It probably makes sense for the objector  
3 to go first, and then you can respond.

4 So I don't know, Mr. Nguyen, whether you or Ms.  
5 Schrage wants to go first.

6 MR. NGUYEN: I -- since I'm here, I volunteer to go  
7 first, but if Ms. Schrage wants to go first, I'm happy to cede  
8 the podium.

9 THE COURT: Come on up.

10 MR. NGUYEN: All right. Your Honor, Ha Nguyen for  
11 the United States Trustee.

12 Thank you for the opportunity to address the Court  
13 with our objection. I've done many of these objections in  
14 front of Judge Lopez, I think he's a little bit tired of me  
15 telling him why I think *Robertshaw* was wrongly decided. But  
16 this is my first time in front of you with this objection, so  
17 I look forward to our conversation on the third-party release,  
18 on this issue.

19 As Your Honor knows, and we filed a brief -- I know  
20 you heard from Ms. Hersh from our Dallas office this morning  
21 -- the Supreme Court in *Purdue* held that there is really no  
22 basis for non-consensual third-party releases. And the  
23 Supreme Court really left it up to Your Honor and Bankruptcy  
24 Courts like Judge Lopez and other judges around the country to  
25 determine what exactly is consent, and really leave it up to

1                   this Court to resolve the consent issue.

2                   As Your Honor knows, the United States Trustee takes  
3                   the position that the opt-out mechanism used in this case  
4                   renders the third-party releases in the plan non-consensual.

5                   As the Court is aware, courts all around the country  
6                   have been revisiting this issue since *Purdue*. Judge Lopez  
7                   issued his decision in *Robertshaw*. Courts in the Northern  
8                   District of Texas, particularly in *Ebix* and *Eiger*, Judge  
9                   Everett has a decision out there. Judge Jernigan in *Eiger* had  
10                   a decision. There are decisions in Florida in the Red Lobster  
11                   cases. There's a decision in Delaware by Judge Goldblatt in  
12                   the Smallhold case, where he went 180 from his Arsenal case,  
13                   which Judge Lopez cites in his *Robertshaw* decision.

14                   THE COURT: There was a decision today by Judge  
15                   Stickles.

16                   MR. NGUYEN: Yes, and that was the *Lumio*, one of the  
17                   *Lumio* cases.

18                   THE COURT: Right.

19                   MR. NGUYEN: I think that was early. But -- and  
20                   I've (indiscernible), so I think we're all really going, in  
21                   terms of the forefront of everything that's been going on.  
22                   It's coming really fast.

23                   But Judge, in terms of all these views -- I know  
24                   Your Honor expressed a view in Independent Driller Contractors  
25                   [sic], and I believe it was a media --

THE COURT: Digital Media.

MR. NGUYEN: Digital Media. Thank you.

But Your Honor, I would urge you to adopt the views of Judge Everett in Ebix and Judge Goldblatt in Smallhold. And really, the reasoning is straightforward. You know, state contract laws should really apply when you're looking at consent.

And also, in examining the default forfeiture theory, when someone gets notice of something, what happens if they don't act. Under -- in *Smallhold*, Judge Goldblatt said you can't really default them because you can't find that remedy anywhere in the Bankruptcy Code. And he uses like a five-dollar donation to the CEO's college fund as like there's no way you can default somebody if you put that provision in there. But he thinks that third-party releases are very similar, in terms of the forfeiture theory.

One case that really stands out to me -- and I think we cite it our brief -- is -- and I'm going to butcher the name -- is Norcia. It's a case where -- and it's not a bankruptcy case; it's a Ninth Circuit case, where a consumer bought a Samsung phone from a Verizon store. The customer walked in there, signed a customer agreement with Verizon, took the Samsung phone home and, within the Samsung phone, there was a product warranty. And within that product warranty, it says, you know, if you don't write to us within

1           30 days or if you don't call this phone number within 30 days,  
2           you are consenting to arbitrate any claims that you may have  
3           with Samsung. I'm not entirely sure what happened with the  
4           phone, but the customer eventually sued Samsung. And Samsung  
5           said hey, you know, you need an arbiter, you can't sue us.

6                           The Ninth Circuit took it up, and one of the things  
7           they said was that customer agreement with the Verizon Store  
8           and the customer, that has nothing to do with Samsung, Samsung  
9           was just the provider of the phone, that was a contract, very  
10           similar to here, Debtor and their creditors. We're not  
11           talking about third parties. So the Ninth Circuit said that  
12           customer agreement, it's between two parties, you can't really  
13           bring in a third party like Samsung.

14                           And then so Samsung said well, there was consent to  
15           arbitrate under this clear and conspicuous warning that we had  
16           on our product's label with the warranty. The Ninth Circuit  
17           said well, really, there's no federal law that we can look to,  
18           to determine whether there was consent there. So they looked  
19           at contract law under the State of California. And really, it  
20           comes back to whether failing to act, whether having silence  
21           when there is something that's warning you within a product  
22           label can you deem that as consent. And the Ninth Circuit  
23           really looked at that and said well, you know, silence can't  
24           be consent, it's basically contract law, there was no contract  
25           there. So, you know, those arbitration agreement did not --

1 didn't apply.

2 You know, this is entirely applicable to the  
3 contracts of a Chapter 11 case. You know, the nonDebtor  
4 released parties are really not signatories to this Chapter 11  
5 plan. As you hear from the Debtor, this is really about the  
6 Class 3, it's really about a de-leveraging of the term notes.

7 And really, the Bankruptcy Code itself provides that  
8 a plan is specifically to deal with how a Debtor will pay its  
9 creditors. It's not really a vehicle for claims to be  
10 resolved by nonDebtor. That's really not the purpose of the  
11 Bankruptcy Code.

12 Judge, we have a lot more arguments and cites and  
13 law in the brief, so I won't belabor the point. But again, I  
14 would urge you to take a look at what Judge Everett said in  
15 Ebix, look at what Judge Goldblatt said in --

16 THE COURT: Smallhold.

17 MR. NGUYEN: -- Smallhold. Thank you.

18 And Judge, if those two judges do not convince you,  
19 I think there's a third way to look at this and -- well, a  
20 second way to look at this is -- well, the first way to look  
21 at it is the U.S. Trustee thinks opt-out is the -- never  
22 permissible, you can't procure consent.

23 But there's another way. And I would point you to  
24 what Judge Stickles did in *Lumio* and what Judge Jernigan did  
25 in *Eiger*. Although the results were different, I think Your

1 Honor can apply it to this case.

2                   In *Lumio*, Judge Stickles looked at the facts of the  
3 case and said -- you know, she was very skeptical that silence  
4 would mean consent when the general unsecured creditors were  
5 not entitled to vote and they were not entitled to any  
6 recovery. So Judge Stickles, again, really examined the facts  
7 of the case and said she would not allow the opt-out in a case  
8 where these creditors are getting nothing and you're going to  
9 send this out and expect them to return it, or else they're  
10 going to be binded [sic] by the third-party release.

11                  Judge Jernigan approved the use of the opt-out in  
12 *Eiger* Pharmaceutical. But one of the things that she said at  
13 the hearing was that, you know, Debtors shouldn't always come  
14 in here and assume that these opt-out, it's going to be  
15 approved.

16                  So, really, it brings this view that, you know, it's  
17 not a never opt-out or an always opt-out, but maybe let's take  
18 a look at the facts of the case, and it really depends on, you  
19 know, the process and the type of creditors you have and the  
20 purpose of the plan.

21                  Judge, I know you approved the opt-outs in the past,  
22 but I really don't think it binds your hands with this  
23 specific case. So, Judge, the opt-out in this case is not  
24 really effective. It's similar to like *Lumio*, and it  
25 shouldn't be used in this case.

12 THE COURT: Well --

13 MR. NGUYEN: -- riding through.

16 MR. NGUYEN: That's true. But they're -- so they're  
17 really riding through, based on --

18 THE COURT: Yeah. So it's not like --

19 MR. NGUYEN: The unimpaired is the point, Your  
20 Honor. But the thing is the crux of the case is the de-  
21 leveraging of the Class 3. That's why -- primarily why  
22 they're here.

23                   But in terms of just the vote records and the opt-  
24                   out, 16,968 opt-outs were sent; 165 opt-outs were returned.  
25                   I'm doing some quick lawyer math, that's a little bit under 1

1 percent, very close to 1 percent. I rounded up, I give them 1  
2 percent.

3 The Debtors, in their brief, talked about the  
4 specific process as a way to determine whether releases are  
5 consensual. I believe they cite this -- the case from Energy  
6 & Exploration Partners and they quote. Quote:

7 " -- notice has gone out, parties have actually  
8 gotten it, they've had the opportunity to look at it, and the  
9 disclosure is adequate so that they can actually understand  
10 what they're being asked to do and the options that they're  
11 being given."

12 Here, it's a little bit difficult for me to apply it  
13 to the facts of this case when you get 99 percent of the opt-  
14 outs not returning. People who received the notice in the  
15 mail did not return the form. Are we really going to say that  
16 99 percent of these holders of claims affirmatively consented  
17 to give releases to nonDebtor third parties, when, really,  
18 they're riding through and they're not part of this Class 3  
19 and they're not entitled to vote? And even one class is  
20 getting entirely wiped out, the equity class. And you're  
21 saying hey, we're wiping out your entire equity, and by the  
22 way, you're also granting all these third-party releases to  
23 these people. I think that's inappropriate for a case like  
24 this, where you're really trying to de-leverage the company  
25 and make sure the Class 3 is restructured. So applying that

1 other view that Judge Jernigan and Judge Stickles, look to the  
2 facts of this case.

3 I just really -- I remember the days where -- and it  
4 hasn't been so long ago because I haven't been practicing that  
5 long. But you know, third-party releases was kind of a rare  
6 thing. You know? It brings certain claims. But now it's par  
7 the course. It would be mis -- malpractice for these  
8 attorneys not to ask for it in a case like this because every  
9 single case has a third-party release.

10 But for this case, where you're actually just trying  
11 to de-leverage and just trying to have somewhat of a balance  
12 sheet restructure, I just don't think it's appropriate,  
13 especially when everyone is unimpaired and riding through and  
14 one class is getting extinguished, and that's the Class 5  
15 equity.

16 Lastly, Judge, I just want to talk about the  
17 "related party" definition that we raised in our objection. I  
18 know the Debtor narrowed the definition to some agency or  
19 derivative claim based on the amended plan. But I really  
20 don't think that resolved the problem in our objection.

21 These related parties are still releasing something  
22 against a third party; whether it's agency or derivative  
23 claim, they're still releasing something. So, if you're  
24 releasing something, at a minimum, you need notice. The  
25 record is clear that the related parties were not provided

1 notice and they were not given the opt-out form and did not  
2 consent to the third-party releases.

3 So, if the Court disagrees with all I said about the  
4 opt-out, and you can deem consent under the opt-out, I would  
5 simply ask the Court to just strike the related parties  
6 because, simply, due process requires that these related  
7 parties who are giving a release, although it's a narrow  
8 release, they still have an opportunity to have notice and an  
9 opportunity to object, which didn't happen here for the  
10 related party.

11 So, Your Honor, for the reasons stated in our  
12 objection and the arguments presented here today, we ask that  
13 confirmation be denied unless the third-party release is  
14 revised with an opt-in or some sort of affirmative consent.  
15 Thank you, Your Honor.

16 THE COURT: Thank you.

17 All right. Ms. Schrage?

18 MS. SCHRAGE: Yes, Your Honor. Hi. Can you hear me  
19 okay?

20 THE COURT: I can hear you fine. Thank you so much.

21 MS. SCHRAGE: Okay. Great. Okay. So, Your Honor,  
22 Patricia Schrage for the Securities and Exchange Commission.  
23 This is also my first time before you, so I appreciate the  
24 opportunity to allow us to come into court, especially  
25 virtually. Appreciate that. Thank you, Your Honor.

1 THE COURT: You're welcome.

2 MS. SCHRAGE: So the --

3 THE COURT: Any time.

4 MS. SCHRAGE: The U.S. Trustee -- thank you. Thank  
5 you very much.

6 So the U.S. Trustee, they go through, you know, a  
7 lot of the points, and the SEC agrees with the points that the  
8 U.S. Trustee made today and in their papers.

25 It's the SEC's position that, in order to bind these

1           shareholders and the subordinated creditors to that release,  
2           that you need a showing of affirmative consent. Without the  
3           affirmative consent, respectfully, they (indiscernible) on  
4           whether there was consent.

5           Specifically in these case -- in this case, the  
6           facts show they need affirmative consent. The Container Store  
7           is a public company. And according to the Debtors' voting  
8           declaration, only a small handful of the shareholders  
9           responded.

10           In the most recent declaration that was filed, of  
11           over thirty eight -- of over 3,800 forms that were sent out,  
12           only 15 came back from the Class 8 equity holders. That is a  
13           very small amount. And of those 15, only 9 actually opted  
14           out. So there would be remaining 6. And apparently, those 6  
15           didn't opt out. There were also 297 forms returned. So it's  
16           unclear, you know, what group those return forms came from.

17           But what that does tell us is that, you know,  
18           shareholders may not be getting the form. The shareholders  
19           rely on nominees to get the forms and have the forms sent to  
20           them.

21           And you know -- and the other thing is it doesn't  
22           tell us, you know, because there was that small number that  
23           were returned, but the ones that returned the forms and didn't  
24           check the box, there's also (indiscernible) it appears that  
25           they didn't know why they were even receiving the form. If

1           they did, they likely would have either not returned it or  
2           checked the box.

3           So, Your Honor, we're not sure how comprehensive the  
4           service was. We do know the nominees were served, that's  
5           clear from their papers. And the certificate of service does  
6           appear to show that forms were mailed to some of the  
7           beneficial holders. It doesn't appear and it's unlikely that  
8           they would have been to all. We do know those nominees were  
9           served.

10           And Your Honor, just also, you know, I understand  
11           that the U.S. Trustee did make the point about the opt-in  
12           versus the opt-out. But it is our view that the only way to  
13           truly know that these shareholders were served and if they  
14           consented was to include an opt-in mechanisms, versus an opt-  
15           out mechanism.

16           You know, Purdue did change the legal landscape in  
17           this regard, and it's cited in our objection. There were  
18           courts post-Purdue that are requiring a showing of affirmative  
19           consent to bind parties to the third-party releases. And  
20           that's particularly (indiscernible) with respect to the  
21           shareholders, who, in many cases, are deemed to -- are not  
22           getting any consideration and are deemed to reject the plan.

23           Your Honor, so the Bankruptcy Code does not  
24           authorize the nonDebtor third-party releases without the  
25           consent of the affected claimant and there is no federal law

1       regarding consent. As discussed in our objection and in the  
2       U.S. Trustee's brief, courts have (indiscernible) basic  
3       contract principles when considering whether a release is  
4       consensual. And under the basic contract law, a creditor's  
5       filing is generally not sufficient with regard to consent.

6               In addition, some of the cases, including the recent  
7       case from the district in *Robertshaw*, have referenced the use  
8       of the opt-outs in the class action support opt-outs in the  
9       Chapter 11 plan process. However, as we state in our  
10      objection, that opt-out mechanism in class actions is  
11      different from the mechanism used in the Chapter 11 plan  
12      process, and that is because, in a class action, there are  
13      additional projection -- protections which are not available  
14      here.

15               And Your Honor, you know, as the U.S. Trustee had  
16      stated earlier and went through quite a few of the cases, you  
17      know, the case law on this point is developing. And courts  
18      post-Purdue are reconsidering how to look at consent and how  
19      consent can be applied. So, you know, are aware that just,  
20      you know, a week or so ago, in IDC, in Independence -- well,  
21      I'll just call it "IDC" for now -- that Your Honor did approve  
22      that opt-out mechanism, and other cases in this district have,  
23      as well.

24               You know, the SEC's view is that, on these facts,  
25      the Court can come to a different conclusion. And we do

1 request that the Court delete the release or amend the plan to  
2 carve out the shareholders and the subordinated claimants or  
3 require an opt-in. Thank you, Your Honor.

4 THE COURT: Thank you. All right.

5 MR. MURTAGH: For the record again, Your Honor, it's  
6 Hugh Murtagh from Latham & Watkins on behalf of the Debtors.

7 I'll address both objections with the same argument.  
8 I think they basically go to the same points, Your Honor.

9 So just taking a small step back, let's start with  
10 what we all agree on. Yes, Your Honor, Purdue holds that non-  
11 consensual third-party releases are not permitted under the  
12 Code. As Your Honor recently recognized in *Independence*  
13 *Contract Drilling*, that was already the law in the Fifth  
14 Circuit. So, in other words, nothing has changed here.  
15 Third-party releases were -- non-consensual third-party  
16 releases were and remain prohibited.

17 However, we all also agree that, long before Purdue  
18 and in a substantial number of cases after Purdue, courts in  
19 this district have approved opt-out third-party releases  
20 because a release obtained through a properly noticed and  
21 documented opt-out mechanism is a consensual release.

22 Taking only some of the post-Purdue cases, both Your  
23 Honor and Judge Lopez have held, both in public and private  
24 company cases, that a proper opt-out mechanism is a sufficient  
25 basis for a consensual third-party release. Those cases

1 included:

6 And also *Robertshaw*, Your Honor, which the objectors  
7 referenced, reported at 662 B.R. 300, in which Judge Lopez  
8 also approved opt-out releases and held, quote:

25 There is no basis to assume that the only way to

1 sufficiently manifest consent is on basic non-judicial  
2 contract principles. As this Court and I think Judge Lopez  
3 have referenced, there is federal court practice that deems  
4 consent based on a proper process, including, but not limited  
5 to class actions.

6 And what the process does here is not just bless  
7 silence. It blesses a decision. If it is done properly, an  
8 opt-out mechanism puts a decision in front of a creditor or  
9 stakeholder whether they want to grant the release or not.  
10 And that stakeholder is told in clear and conspicuous language  
11 how to do it. And the creditor's or interest holder's  
12 decision should be respected.

13 And there's no evidence in the record as to why  
14 anyone who received an opt-out form did not return it. And to  
15 speculate it's because they didn't understand it or because  
16 they wanted to opt out, but it was too burdensome, or anything  
17 else is purely speculation.

18 The only evidence we have, Your Honor, the  
19 uncontested evidence is the four declarations before Your  
20 Honor, and that includes robust evidence, which I'll come to,  
21 about the extent of the noticing and the process that was  
22 followed to put that decision in front of creditors and  
23 interest holders, so that they could make a decision.

24 This isn't a contract, it's not an adhesion  
25 contract, where you bought something you needed and you just

1 have to deal with what the contract says or there was a third  
2 party's contract buried inside a box. This is something that  
3 is put conspicuously and purposefully, in bold capital  
4 letters, in front of these creditors and interest holders, to  
5 give them an opportunity to make the decision. And we should  
6 respect the decision that is manifested by the process,  
7 whether they returned an opt-out or decided not to return it  
8 and not opt out. And I think, as Your Honor has made clear,  
9 that's the view in this district.

10 And the question becomes, then:

11 A, was the opt-out process reasonable and effective?

12 And B, are the releases narrowly tailored and core  
13 to the proceedings?

14 So let's turn to those facts because I agree with  
15 the objectors that the facts are important, and these are the  
16 important facts:

17 So, first, as to process, Your Honor, as set forth  
18 in the declarations of Ms. Calderon, the Debtors served  
19 solicitation packages with a release opt-out election on the  
20 only voting class on December 21st.

21 The Debtors served notices of non-voting status and  
22 release opt-out forms on all other classes on or before  
23 December 27th.

24 As is set forth in the declarations, sufficient  
25 forms were sent to nominees to forward to beneficial holders,

1 and the solicitation procedures order directed nominees to  
2 make such forwarding happen.

3 In all cases, the notice and opt-out materials  
4 conspicuously described the nature of the release, included  
5 all of the operative release language from the plan, and  
6 explained the consequences of not returning the completed opt-  
7 out form.

8 Creditors and interest holders were given until  
9 January 21st to make an election by mail, overnight courier,  
10 hand-delivery, or electronic submission via the case website.

11 As of today, Your Honor, including some forms that  
12 were received after the deadline and as the objectors noted,  
13 we received -- I believe, if you count -- if you compare it to  
14 the total number that went out, it may be around one percent,  
15 but several -- a couple hundred were returned, executed, and  
16 they were returned executed across classes, including other  
17 secured claims, ABL claims, general unsecured claims, and  
18 existing equity interests.

19 So, again, Your Honor, to return to what that  
20 evidence shows, is that the noticing that was supposed to  
21 happen happened. Creditors and interest holders who were  
22 supposed to get notices got them. There is no evidence to the  
23 contrary. And creditors and interest holders who wanted to  
24 opt out returned opt-out forms. That's the only evidence  
25 before this Court, is that the process works for people who

1 chose to opt out. They knew how to do it if they were in  
2 secured claims, ABL claims, unsecured claims, or even equity  
3 interests recover nothing, whether they were individuals or  
4 whether they were entities.

5 We cannot speculate as to why others made a decision  
6 not to opt out. But consistent with the practice in this  
7 district, the process afforded that opportunity, a decision  
8 was made not to opt out, and it should be respected. Anything  
9 else is just speculation about why a creditor or interests  
10 holder who didn't return form didn't return a form. It should  
11 be viewed as it is intended to be viewed, as it is explained  
12 to the creditor, who should be deemed to understand it, that  
13 not opting out means you're granting the release.

14 And to shortcut the point, Your Honor, the Debtors  
15 followed substantially the same process followed in  
16 *Independence Contract Drilling* and *Vroom* and *Robertshaw* and  
17 other cases noted in our briefing, and we should see the same  
18 result here, Your Honor. This was a fair and effective opt-  
19 out process for consensual releases.

20 I -- I'll move on to tailoring, Your Honor, and  
21 pause briefly on injunction. But let me stop there in case  
22 Your Honor has questions on the core point.

23 THE COURT: Nope.

24 MR. MURTAGH: So, as to tailoring, Your Honor, just  
25 briefly. The third-party releases are narrowly tailored. The

1 releases themselves release only claims related to the Debtors  
2 and these cases, just as in all of the precedent cases we've  
3 been discussing.

4 As set forth in Mr. Coben's declaration,  
5 specifically at Paragraph 56, the third-party releases were a  
6 core consideration among the parties to the TSA, instrumental  
7 in development of the plan, and critical to gaining and  
8 growing support for the plan and the cases from released  
9 parties. Like most everything here, Your Honor, that evidence  
10 is also unchallenged. So the releases are necessary and  
11 appropriately tailored.

12 Finally, Your Honor, and as briefly covered in  
13 *Independence Contract Drilling*, the injunction follows the  
14 release. Injunctions are appropriate in connection with  
15 third-party releases under Fifth Circuit law. And again, Your  
16 Honor, the evidence supports that the injunction is a  
17 necessary complement to the releases, as set forth in Mr.  
18 Coben's declaration at Paragraphs 60 to 62.

19 And then the final point on the related party  
20 releases that the Office of the United States Trustee raised.  
21 Your Honor, the structure of the releases, as modified --  
22 which is intended as a clarification -- is that related  
23 parties are only granting releases to the extent that the  
24 primary releasing party could be forced to grant the release  
25 on behalf of the related party through agency principles. So

1                   the power to grant the release is vested in the releasing  
2                   party, and the release is only effective to that extent as to  
3                   the related party or, similarly, for a derivative claim that  
4                   is, itself, released by the direct claimant's release. So  
5                   there's nothing that is being taken from a related party that  
6                   is not already fully vested in the hands of the releasing  
7                   party.

8                   THE COURT: Who received notice.

9                   MR. MURTAGH: Correct, correct.

10                  So, in sum, Your Honor, the third-party releases are  
11                  consensual and should be approved together with their  
12                  accompanying injunction.

13                  That's all I have on the releases, Your Honor. I  
14                  did have on or two housekeeping points. But before I come to  
15                  that, let me pause and see if Your Honor has any questions.

16                  THE COURT: No questions.

17                  MR. MURTAGH: So, just in terms of housekeeping,  
18                  Your Honor, for completeness of the record, in addition to the  
19                  declarations already admitted into evidence as Docket Numbers  
20                  171-19, 171-20, 171-21, and 179, we also would offer into  
21                  evidence the remaining items referenced on the witness and  
22                  exhibit list, which are found at Docket Numbers 171-1 through  
23                  171-18.

24                  THE COURT: All right. Does anyone have any  
25                  objection to the exhibits found at Documents Number 171-1

1 through 171-18?

2 And they include Mr. Coben's original declaration  
3 for the Disclosure Statement, that's Exhibit Number 171-1.

4 171-2 is the Disclosure Statement.

5 171-3 are the financial projections.

6 171-4 is the liquidation analysis.

7 171-5 is the valuation analysis.

8 171-6 is the prepackaged joint plan.

9 171-7 is the certificate of service on the  
10 solicitation dated December 23rd, 2024.

11 171-8 is the order scheduling the combined hearing.

12 And then 171-9 through 171-15 are the various  
13 certificates of service and affidavits filed by the claims  
14 agent in connection with the service of the plan.

15 And 171-16 is the first amended prepackaged plan.

16 And 171-17 is the redlines of the prepackaged plan  
17 of the amended plan.

18 And 171-18 is notice of the filing of the first  
19 amended prepackaged plan.

20 Any objections?

21 (No verbal response)

22 THE COURT: All right. Hearing none, they'll be  
23 admitted.

24 (Debtors' Exhibits ECF 171-1 through 171-18 received in  
25 evidence)

1 MR. MURTAGH: Thank you, Your Honor.

2 That concludes the Debtors' presentation, and we'd  
3 respectfully request that the Court enter the order confirming  
4 the plan found at Docket Number 177.

5 THE COURT: All right.

6 MR. MURTAGH: Thank you again.

7 THE COURT: Mr. Nguyen?

8 MR. NGUYEN: Nothing further, Your Honor. Thank  
9 you.

10 THE COURT: Okay. Ms. Schrage?

11 MS. SCHRAGE: Nothing further, Your Honor. Thank  
12 you.

13 THE COURT: Okay.

14 (Pause in proceedings)

15 THE COURT: Okay. Before the Court today is the  
16 Debtors' hearing on confirmation of the first amended plan and  
17 related matters.

18 With respect to all of the issues found in 1129-1 --  
19 and I will deal with the objection separately -- I find that  
20 the -- number one, that I have jurisdiction; that confirmation  
21 of the plan is a core matter; that, you know, the Court has an  
22 independent obligation to review the plan, which I have done.  
23 And I believe that, based on the uncontroverted evidence, the  
24 plan meets all of the requirements of 1129 of the Bankruptcy  
25 Code, in order to obtain confirmation. And that is based on,

1 not only the exhibits that were admitted, but also the  
2 declarations of Mr. Coben, Mr. Dunayer, and the voting  
3 declaration filed by Ms. Calderon.

4 So now let me turn to the objections raised by the  
5 U.S. Trustee and the SEC.

6 So I want to -- and I do think that the facts  
7 matter, and I do view every plan on the facts. There is no  
8 set rule with respect to how third-party releases will be  
9 treated. I think it is based on the facts and I do think that  
10 facts matter.

11 And based on the evidence before me, what I have is  
12 a situation of a -- if I look at the liquidation analysis,  
13 this company would be hopelessly insolvent, the secured  
14 creditor would receive pennies on the dollar. And but for the  
15 negotiation that was had by the company in this charge of its  
16 fiduciary obligations with its ad hoc group of creditors, we  
17 have now reached a plan where the unsecured creditors are  
18 getting a hundred cents on the dollar; the ABL was paid off,  
19 they got a hundred cents on the dollar.

20 And the ad hoc group represented by Mr. Persons'  
21 client is the only impaired class, and they are receiving less  
22 than they would otherwise be entitled to. And, in essence,  
23 they are -- what they have done, that has allowed funding of  
24 the plan to do the things that are being -- the transactions  
25 that are contemplated by the plan, paying all unsecured

1           creditors in full, saving the jobs, and continuing the  
2           business as a going concern. So that's the way that I view  
3           the transaction that is being implemented by the plan, so I do  
4           think that facts matter.

5           This company was hopelessly insolvent. The equity  
6           here, if you use the strict priority rule, if you look at the  
7           liquidation analysis, most unsecured creditors would have  
8           received nothing. So, in essence, that's -- the facts do  
9           matter, and that's the way that I view the plan.

10           So I'm -- I thought very carefully about Mr.  
11           Nguyen's arguments and Ms. Schrage's arguments, and I'm -- and  
12           I would be -- if we were writing on a blank slate, I think  
13           that Mr. Nguyen's arguments would be fairly persuasive, but  
14           we're not writing on a blank slate.

15           Prior to Purdue, the Fifth Circuit did not have non-  
16           consensual third-party releases. We have been in a situation  
17           for years that -- since Pacific Lumber, where there have been  
18           no non-consensual third-party releases in the Fifth Circuit.  
19           So we have developed and refined a way to determine whether  
20           the releases that are included in the plan are consensual, and  
21           we've done that by the use of an opt-out mechanism that allows  
22           for notice to the parties, actual notice to the parties, and  
23           then allows them the opportunity to opt out. That has been  
24           refined in cases for a while.

25           So I don't think Purdue really changed anything in

1                   the Fifth Circuit as it relates to non-consensual third-party  
2                   releases because there weren't any. And the Supreme Court was  
3                   clear in Purdue that -- when they said nothing that we have  
4                   said should be construed to call into question consensual  
5                   third-party releases offered in connection with bankruptcy  
6                   organizations.

7                   And having, number one, a mechanism that has been  
8                   developed over the cases;

9                   Number two, having effective service of that  
10                  mechanism, I think the evidence is uncontroverted based on the  
11                  declaration of Ms. Calderon, based on the numerous exhibits  
12                  that were admitted showing service, that service was  
13                  effective. You know, the nominees, who are the only people  
14                  that the Debtor had, received it with instructions to forward  
15                  them. So I believe that the process here worked. And giving  
16                  the opportunity for the Debtors [sic] to opt out is consistent  
17                  with having consensual third-party releases.

18                  So I don't think that we're necessarily treading on  
19                  new ground. I think the major goal and the major inquiry that  
20                  the Court has to make is: Was this a process that was fair  
21                  and that it was intended to get notice to people, so that they  
22                  could make a decision?

23                  And as Mr. Murtagh indicated, there was no evidence  
24                  as to why people didn't return it. There was no evidence  
25                  that, because some of the shareholders returned it without

1 having opted out, that they somehow misunderstood it, misread  
2 it, or I don't know what. There is simply no evidence

3 So, in -- kind of in summary, I agree that facts do  
4 matter. I think that, based on the facts in this case and the  
5 process that was run, that the releases are -- because of the  
6 opportunity for all the parties to have opted out, are  
7 consensual.

8 And furthermore, that the injunction is -- I don't  
9 believe that the injunction is an additional thing that needs  
10 to be added in order to make non-consensual releases  
11 consensual. I think the injunction is the way that you  
12 enforce the mechanism. It's more of a -- it's more a process  
13 than it is substance. So I don't think that the use of the  
14 injunction to support a consensual release is in any way  
15 prohibited by the case law, either by Purdue or in the Fifth  
16 Circuit.

17 I believe that the other arguments raised by the  
18 trustee, similarly, the gatekeeping function, again, Highland  
19 Capital permits the gatekeeping function with respect to the  
20 exculpated parties, which, in this case, is only the Debtor,  
21 as well as the parties that are released.

22 So, in addressing the scope -- and that I did look  
23 at very, very closely, the scope, and I agree with Mr.  
24 Murtagh. The only people -- the related parties that would be  
25 giving a release would be only parties for whom the people who

1 received notice would have been able to opt out. And the same  
2 thing is true for the people who are being provided the  
3 releases. So I think that, in terms of the scope of the  
4 releases and use of the "related party" definition, I think --  
5 with the limitations that were included in the revised draft,  
6 I think those, again, are perfectly appropriate because it's  
7 you're only binding people who you could otherwise bind by the  
8 people who got notice.

9                   With respect to the request to waive the fourteen-  
10 day period under 3020(e), I believe it's appropriate under the  
11 circumstances. This is not a -- you know, a mega case, in  
12 terms of billions of dollars. And I think that being able to  
13 save on the administrative burden in this case is significant,  
14 so I will go ahead and approve that.

15                   So, for those reasons, the Court overrules the  
16 objections and I will confirm the plan.

17                   So is it the order that was submitted at Docket  
18 Number 177?

19                   MR. MURTAGH: That's correct, Your Honor.

20                   (Pause in proceedings)

21                   THE COURT: And since Ms. Shriro did not appear,  
22 I -- am I to believe that the changes in Paragraph 26 and 29  
23 resolved her objections? I think you said that, but I just  
24 want to make sure.

25                   MR. MURTAGH: That's correct, Your Honor. The

1 modifications for the landlord objection --

2 THE COURT: Paragraphs --

3 MR. MURTAGH: -- those changes --

4 THE COURT: -- 26 --

5 MR. MURTAGH: -- resolve the ---

6 THE COURT: -- and 29.

7 MR. MURTAGH: -- objection.

8 THE COURT: Okay.

9 (Pause in proceedings)

10 THE COURT: Okay. The confirmation order has been  
11 signed and sent to docketing.

12 MR. MURTAGH: Thank you, Your Honor.

13 THE COURT: Anything else we can do?

14 MR. MURTAGH: On behalf of the Debtors --

15 (Participants confer)

16 MR. MURTAGH: Oh, one thing.

17 UNIDENTIFIED: Just a very quick housekeeping item.  
18 We did have our retention applications on file. The objection  
19 deadline for that runs today, and then we'll be filing  
20 certificates of no objection for those probably earlier next  
21 week.

22 THE COURT: Okay. Thank you.

23 Anything else, anyone?

24 MR. MURTAGH: That's it, Your Honor.

25 THE COURT: All right. Thank you very much. You're

1 all excused.

2 (Proceedings concluded at 2:02 p.m.)

3 \* \* \* \* \*

4 I certify that the foregoing is a correct transcript  
5 to the best of my ability produced from the electronic sound  
6 recording of the proceedings in the above-entitled matter.

7 /S./ MARY D. HENRY

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11 JTT TRANSCRIPT #69558  
12 DATE FILED: JANUARY 28, 2025

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